

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA06-0971

April 25, 2007

CARL EUGENE MONTGOMERY
APPELLANT

v.

LINDA SUE MONTGOMERY
APPELLEE

AN APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT
[DR-05-184-2]

HONORABLE MICHAEL MEDLOCK,
JUDGE

REVERSED AND REMANDED

On May 19, 2005, the Crawford County Circuit Court granted Linda Montgomery's petition for absolute divorce from her husband, Carl Montgomery, and ordered Carl to maintain health insurance on two of the parties' three adult children and to pay Linda \$175 per week in alimony. Carl appeals, and we reverse and remand.

The parties were married on July 3, 1976, and separated in 2005 when Linda learned that Carl was having an extramarital affair. Linda filed for divorce and requested that Carl maintain health insurance on two of the parties' three adult children and pay \$200 per week in alimony.

The trial court abused its discretion when it ordered Carl to pay alimony to Linda. An

award of alimony is solely within the trial court's discretion, and such an award will not be reversed absent an abuse of discretion. *Barker v. Barker*, 66 Ark. App. 187, 992 S.W.2d 136 (1999). The purpose of alimony is to rectify the economic imbalance in the earning power and standard of living of the divorced parties in light of the particular facts of each case. *Holaway v. Holaway*, 70 Ark. App. 240, 16 S.W.3d 302 (2000). In awarding alimony, the primary factors to consider are the financial need of one spouse and the other spouse's ability to pay. *Davis v. Davis*, 79 Ark. App. 178, 84 S.W.3d 447 (2002).

Both Linda and Carl worked throughout their marriage. At the time of the divorce, Carl was a car salesman, earning \$750 per week, while Linda was a salesperson earning \$356 per week, with monthly bonuses averaging between \$500 and \$700. Carl had a 401(k) retirement plan valued at \$19,077, while Linda had a 401(k) valued at \$19,054. The parties' marital home, which had no mortgage, was valued at approximately \$180,000. The court equitably divided all marital property; however, it ordered that Linda maintain possession of the marital home, rent free, for two years and then the home would be sold and the proceeds divided. Moreover, the parties' marital debt consisted of two credit cards, with balances totaling approximately \$7,800, which was equitably divided.

Linda's need for alimony was based on her support for her adult children and, therefore, the alimony was awarded in error. In support of her request for alimony, Linda testified:

I am asking for alimony or maintenance. I am having to pay insurance for myself which is over \$200 a month. I am still helping the children. I do not support them

solely. They do work but I help them quite a bit. I am asking for \$200 a week so that I can maintain any kind of lifestyle.

She further testified that, “I am not asking for [alimony] because I am mad at him. After twenty-nine years I think I deserve living the way I have been living. I live in a house and I help the kids. The kids still live at home.” Linda failed to show a financial need for alimony except to support her adult children, which is simply a veiled attempt to collect child support for them. We, therefore, reverse and remand this issue for the circuit court to enter a decree consistent with our opinion.

The trial court also abused its discretion when it ordered Carl to maintain insurance on the parties’ two adult children because parents are obligated to support minor children, not adults, *Rogers v. Rogers*, 83 Ark. App. 206, 121 S.W.3d 510 (2003), except when a parent’s adult child is mentally or physically disabled. *Kimbrell v. Kimbrell*, 47 Ark. App. 56, 884 S.W.2d 268 (1994). Neither of the adult children for which support was ordered are mentally or physically disabled and, therefore, the trial court erred in ordering Carl to maintain insurance for them. We, therefore, reverse on this issue.

Reversed and remanded.

PITTMAN, C.J., and MARSHALL, J., agree.